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August 2, 2011

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EX PARTE PRESENTATION

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Review of the Commission's Program Access Rules and
Examination of Programming Tying Arrangements, MB Docket No.
07-198; The Regional Sports Network Marketplace, MB Docket No.
11-128

Dear Ms. Dortch:

On August 1, 2011, John T. Komeiji, General Counsel of Hawaiian Telcom Services Company, Inc. ("HTSC"), and I met with Austin Schlick, General Counsel, Peter Karanjia and Susan Aaron of the General Counsel's Office, and Marilyn Sonn, Steve Broecker, David Konczal, and Diana Sokolow of the Mass Media Bureau, in the above-referenced proceedings.

In June 2011, HTSC was awarded a franchise to become a multi-channel video programming distributor ("MVPD") for the island of Oahu in Hawaii. HTSC enters the video marketplace in Hawaii as a new competitor, facing the dominant Oceanic Time Warner Cable ("Oceanic"), which has approximately 94 percent of the MVPD customers on Oahu and over 90 percent of the MVPD customers in Hawaii. HTSC has been actively making arrangements with programmers to include in its channel lineup and is moving ahead with its marketing efforts. One of the critical offerings as an MVPD on Oahu is the ability to air University of Hawaii sports programming due to the unique nature of the sports environment in Hawaii.

The University of Hawaii ("UH") in 2008 awarded Oceanic the contract to air all UH sports programming, including football and basketball. Included in the six-year contract was a three-year arrangement that allowed an over-the-air TV broadcaster, KFVE, to retain broadcast rights to all UH events. That three-year arrangement has ended, so starting with the upcoming 2011-2012 school year, Oceanic will be the only source for UH sports programming and HTSC no longer will have access to such programming through retransmission consent rights under the FCC's rules.

Time Warner Cable has informed HTSC orally that it will not give HTSC access to all UH sports programming that are part of its RSN, although it has agreed to selectively sub-license certain sports events following a proposed restructuring of its

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RSN. HTSC has sent a demand letter to gain access to the entire RSN programming, indicating that it may file a formal complaint at the FCC if Time Warner Cable refused it such access. The time for responding to such demand letter has not yet occurred, but will by the end of this week.

HTSC believes that the entire RSN must be made available to HTSC both under the merger conditions in the *Adelphia Order* and the Commission's program access rules. First, Time Warner Cable's proposed restructuring of its RSN appears to be an attempt to evade the *Adelphia Order* merger conditions. As such, it would violate those merger conditions. Second, Time Warner Cable's RSN must be available to HTSC in accordance with the Commission's rebuttable presumption established in its program access rules adopted in the *Terrestrial Loophole Order*. Third, all UH sports programming is "must see" programming in the Hawaii video marketplace. Not allowing competing MVPDs, particularly a new market entrant like HTSC, access to such programming would be "an unfair act or practice, the purpose or effect of which is to hinder significantly" HTSC's ability to provide competing video services in the Hawaii marketplace. Therefore, Time Warner Cable's refusal to provide such access violates Section 628(b) of the Communications Act.

HTSC indicated that it does not believe that the Commission needs to conduct a further rulemaking pursuant to the court's order in *Cablevision Systems Inc. v. FCC*. Courts of Appeals decisions have repeatedly held that the Commission can proceed through either adjudication or rulemaking in implementing a statutory provision.

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced dockets. Please let me know if you have further questions.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for Hawaiian Telcom Services Company, Inc.

cc: Austin Schlick
Susan Aaron
Steven Broeckaert
Peter Karanjia
David Konczal
Diana Sokolow
Marilyn Sonn